

ASSEMBLY BILL

No. 499

Introduced by Assembly Member Swanson

February 20, 2007

An act to amend Sections 647, 653.22, 653.23, 679.01, 679.04, 11165.1, and 11166.3 of the Penal Code, and to amend Sections 300 and 313 of, and to add Sections 307.6 and 626.1 to, the Welfare and Institutions Code, relating to sexually exploited minors.

LEGISLATIVE COUNSEL'S DIGEST

AB 499, as introduced, Swanson. Sexually exploited minors.

(1) Existing law provides that a minor under the jurisdiction of the juvenile court who is in need of protective services shall receive care, treatment, and guidance consistent with his or her best interest and the best interest of the public. Existing law provides that a minor under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with his or her best interest, that holds the minor accountable for his or her behavior, and that is appropriate for his or her circumstances.

Under existing law, it is a misdemeanor to solicit or engage in lewd or dissolute conduct in any public place, to solicit or engage in any act of prostitution, to loiter in any public place with the intent to commit prostitution, or to supervise or otherwise aid a prostitute.

This bill would declare the intent of the Legislature that minors arrested for prostitution should not be prosecuted, but rather treated as victims, and taken to a secure detention center or safe house and processed the same as a person who is a victim of sexual abuse or domestic violence. The bill would require a peace officer, if a person

under 18 years of age has violated any of the prostitution-related provisions described above, to place the person in civil protective custody on a safety hold as a sexually exploited minor and to take the person to a secure protective facility, as specified. The bill would provide that a person who has been placed in civil protective custody on a safety hold as a sexually exploited minor shall not thereafter be subject to any criminal prosecution or juvenile court proceeding based on the facts giving rise to that placement. By imposing new duties on local law enforcement authorities, the bill would impose a state-mandated local program.

(2) Existing law establishes statutory rights of victims and witnesses of crime, as specified, and authorizes a law enforcement officer to provide a victim's rights card to the victim of a crime. Existing law provides that a victim of sexual assault has the right to have victim advocates and a support person of the victim's choosing present at any interview by law enforcement authorities, district attorneys, or defense attorneys. Existing law defines "victim" for purposes of these provisions as a person against whom a crime has been committed.

This bill would include a sexually exploited minor, as described in paragraph (1) above, within the definition of "victim" for purposes of these provisions. The bill would also give sexually exploited minors the right to have victim advocates and a support person of the victim's choosing present at any interview by law enforcement authorities, district attorneys, or defense attorneys. By imposing new duties on local law enforcement and criminal justice authorities, the bill would impose a state-mandated local program.

(3) Existing law establishes the Child Abuse and Neglect Reporting Act, which requires specified persons who have knowledge of or observe a child in their professional capacity or within the scope of their employment, whom the person knows or reasonably suspects has been the victim of child abuse or neglect to make a report to a child protective agency, as defined. Existing law defines "sexual abuse" to include sexual assault or sexual exploitation, as specified, for purposes of these provisions.

This bill would clarify that a sexually exploited minor, as described in paragraph (1) above, is a form of sexual exploitation within the definition of "sexual abuse" for purposes of these provisions.

(4) Existing law, part of the Child Abuse and Neglect Reporting Act, states the Legislature's intent that in each county the law enforcement agencies and the county welfare or probation department shall develop

and implement cooperative arrangements in order to coordinate existing duties in connection with the investigation of suspected child abuse or neglect cases.

This bill, instead, would require the law enforcement agencies and county welfare or probation department in each county to develop and implement a joint policy with cooperative arrangements in order to coordinate existing duties in connection with the investigation of suspected child abuse or neglect cases, including the appropriate handling of sexually exploited minors, as described in paragraph (1) above. By imposing new duties on local authorities, the bill would impose a state-mandated local program.

(5) Existing law provides that a child who has been abused or neglected, as described, is within the jurisdiction of the juvenile court and may be adjudged a dependent child of the juvenile court. This provision applies, among other things, if the child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in the Child Abuse and Neglect Reporting Act, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.

This bill would clarify that a sexually exploited minor may be found within the jurisdiction of the juvenile court and adjudged a dependent child of the juvenile court.

(6) Existing law authorizes a peace officer to take a minor that the officer has reasonable cause to believe is within the jurisdiction of the juvenile court, either as a dependent child or as a ward of the court, into temporary custody without a warrant, as specified. Existing law provides procedures for processing the minor thereafter.

This bill would require an officer who takes a sexually exploited minor into temporary custody pursuant to specified provisions to take the minor to a secure protective facility designated by the county that offers victim services to establish a safety plan and secure appropriate placement for the minor. The bill would require the receiving organization to take immediate steps to notify the minor's parent, guardian, or a responsible relative of the place to which the minor was taken, and would require the officer to make a report of suspected child abuse or neglect. By imposing new duties on local law enforcement, the bill would impose a state-mandated local program.

(7) Existing law requires the release within 48 hours of a minor who is taken into temporary custody by a peace officer or probation officer for suspected abuse or neglect, unless a petition to declare him or her a dependent child has been filed.

This bill would authorize a sexually exploited minor who is taken into temporary custody by a peace officer or probation officer to be held in custody in excess of 48 hours in order to establish a safety plan and secure appropriate placement for the minor.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature that minors
2 arrested for prostitution should not be prosecuted, but rather treated
3 as victims. These children should be taken to a secure detention
4 center or safe house and processed the same as a person who is a
5 victim of sexual abuse or domestic violence.

6 SEC. 2. Section 647 of the Penal Code is amended to read:

7 647. Every person who commits any of the following acts is
8 guilty of disorderly conduct, a misdemeanor:

9 (a) Who solicits anyone to engage in or who engages in lewd
10 or dissolute conduct in any public place or in any place open to
11 the public or exposed to public view.

12 (b) Who solicits or who agrees to engage in or who engages in
13 any act of prostitution. A person agrees to engage in an act of
14 prostitution when, with specific intent to so engage, he or she
15 manifests an acceptance of an offer or solicitation to so engage,
16 regardless of whether the offer or solicitation was made by a person
17 who also possessed the specific intent to engage in prostitution.
18 ~~No~~ An agreement to engage in an act of prostitution shall *not*
19 constitute a violation of this subdivision unless some act, in
20 addition to the agreement, is done within this state in furtherance

1 of the commission of an act of prostitution by the person agreeing
2 to engage in that act. As used in this subdivision, “prostitution”
3 includes any lewd act between persons for money or other
4 consideration.

5 (c) Who accosts other persons in any public place or in any
6 place open to the public for the purpose of begging or soliciting
7 alms.

8 (d) Who loiters in or about any toilet open to the public for the
9 purpose of engaging in or soliciting any lewd or lascivious or any
10 unlawful act.

11 (e) Who loiters or wanders upon the streets or from place to
12 place without apparent reason or business and who refuses to
13 identify himself or herself and to account for his or her presence
14 when requested by any peace officer so to do, if the surrounding
15 circumstances would indicate to a reasonable person that the public
16 safety demands this identification.

17 (f) Who is found in any public place under the influence of
18 intoxicating liquor, any drug, controlled substance, toluene, or any
19 combination of any intoxicating liquor, drug, controlled substance,
20 or toluene, in a condition that he or she is unable to exercise care
21 for his or her own safety or the safety of others, or by reason of
22 his or her being under the influence of intoxicating liquor, any
23 drug, controlled substance, toluene, or any combination of any
24 intoxicating liquor, drug, or toluene, interferes with or obstructs
25 or prevents the free use of any street, sidewalk, or other public
26 way.

27 (g) When a person has violated subdivision (f), a peace officer,
28 if he or she is reasonably able to do so, shall place the person, or
29 cause him or her to be placed, in civil protective custody. The
30 person shall be taken to a facility, designated pursuant to Section
31 5170 of the Welfare and Institutions Code, for the 72-hour
32 treatment and evaluation of inebriates. A peace officer may place
33 a person in civil protective custody with that kind and degree of
34 force which would be lawful were he or she effecting an arrest for
35 a misdemeanor without a warrant. ~~No~~ A person who has been
36 placed in civil protective custody shall *not* thereafter be subject to
37 any criminal prosecution or juvenile court proceeding based on
38 the facts giving rise to this placement. This subdivision shall not
39 apply to the following persons:

1 (1) Any person who is under the influence of any drug, or under
2 the combined influence of intoxicating liquor and any drug.

3 (2) Any person who a peace officer has probable cause to believe
4 has committed any felony, or who has committed any misdemeanor
5 in addition to subdivision (f).

6 (3) Any person who a peace officer in good faith believes will
7 attempt escape or will be unreasonably difficult for medical
8 personnel to control.

9 (h) Who loiters, prowls, or wanders upon the private property
10 of another, at any time, without visible or lawful business with the
11 owner or occupant. As used in this subdivision, “loiter” means to
12 delay or linger without a lawful purpose for being on the property
13 and for the purpose of committing a crime as opportunity may be
14 discovered.

15 (i) Who, while loitering, prowling, or wandering upon the private
16 property of another, at any time, peeks in the door or window of
17 any inhabited building or structure, without visible or lawful
18 business with the owner or occupant.

19 (j) Who lodges in any building, structure, vehicle, or place,
20 whether public or private, without the permission of the owner or
21 person entitled to the possession or in control of it.

22 (k) (1) Any person who looks through a hole or opening, into,
23 or otherwise views, by means of any instrumentality, including,
24 but not limited to, a periscope, telescope, binoculars, camera,
25 motion picture camera, or camcorder, the interior of a bedroom,
26 bathroom, changing room, fitting room, dressing room, or tanning
27 booth, or the interior of any other area in which the occupant has
28 a reasonable expectation of privacy, with the intent to invade the
29 privacy of a person or persons inside. This subdivision shall not
30 apply to those areas of a private business used to count currency
31 or other negotiable instruments.

32 (2) Any person who uses a concealed camcorder, motion picture
33 camera, or photographic camera of any type, to secretly videotape,
34 film, photograph, or record by electronic means, another,
35 identifiable person under or through the clothing being worn by
36 that other person, for the purpose of viewing the body of, or the
37 undergarments worn by, that other person, without the consent or
38 knowledge of that other person, with the intent to arouse, appeal
39 to, or gratify the lust, passions, or sexual desires of that person and

1 invade the privacy of that other person, under circumstances in
2 which the other person has a reasonable expectation of privacy.

3 (3) (A) Any person who uses a concealed camcorder, motion
4 picture camera, or photographic camera of any type, to secretly
5 videotape, film, photograph, or record by electronic means, another,
6 identifiable person who may be in a state of full or partial undress,
7 for the purpose of viewing the body of, or the undergarments worn
8 by, that other person, without the consent or knowledge of that
9 other person, in the interior of a bedroom, bathroom, changing
10 room, fitting room, dressing room, or tanning booth, or the interior
11 of any other area in which that other person has a reasonable
12 expectation of privacy, with the intent to invade the privacy of that
13 other person.

14 (B) Neither of the following is a defense to the crime specified
15 in this paragraph:

16 (i) The defendant was a cohabitant, landlord, tenant, cotenant,
17 employer, employee, or business partner or associate of the victim,
18 or an agent of any of these.

19 (ii) The victim was not in a state of full or partial undress.

20 *(l) If a person under 18 years of age has violated subdivision*
21 *(a) or (b), a peace officer, if he or she is reasonably able to do so,*
22 *shall place the person, or cause him or her to be placed, in civil*
23 *protective custody on a safety hold as a sexually exploited minor.*
24 *The person shall be taken to a secure protective facility, designated*
25 *pursuant to Section 307.6 of the Welfare and Institutions Code. A*
26 *peace officer may place a minor in civil protective custody on a*
27 *safety hold with that kind and degree of force that would be lawful*
28 *were he or she effecting an arrest for a misdemeanor without a*
29 *warrant. A person who has been placed in civil protective custody*
30 *on a safety hold as a sexually exploited minor shall not thereafter*
31 *be subject to any criminal prosecution or juvenile court proceeding*
32 *based on the facts giving rise to this placement.*

33 ~~(t)~~

34 (m) In any accusatory pleading charging a violation of
35 subdivision (b), if the defendant has been once previously convicted
36 of a violation of that subdivision, the previous conviction shall be
37 charged in the accusatory pleading. If the previous conviction is
38 found to be true by the jury, upon a jury trial, or by the court, upon
39 a court trial, or is admitted by the defendant, the defendant shall
40 be imprisoned in a county jail for a period of not less than 45 days

1 and shall not be eligible for release upon completion of sentence,
2 on probation, on parole, on work furlough or work release, or on
3 any other basis until he or she has served a period of not less than
4 45 days in a county jail. In all cases in which probation is granted,
5 the court shall require as a condition thereof that the person be
6 confined in a county jail for at least 45 days. In no event does the
7 court have the power to absolve a person who violates this
8 subdivision from the obligation of spending at least 45 days in
9 confinement in a county jail.

10 In any accusatory pleading charging a violation of subdivision
11 (b), if the defendant has been previously convicted two or more
12 times of a violation of that subdivision, each of these previous
13 convictions shall be charged in the accusatory pleading. If two or
14 more of these previous convictions are found to be true by the jury,
15 upon a jury trial, or by the court, upon a court trial, or are admitted
16 by the defendant, the defendant shall be imprisoned in a county
17 jail for a period of not less than 90 days and shall not be eligible
18 for release upon completion of sentence, on probation, on parole,
19 on work furlough or work release, or on any other basis until he
20 or she has served a period of not less than 90 days in a county jail.
21 In all cases in which probation is granted, the court shall require
22 as a condition thereof that the person be confined in a county jail
23 for at least 90 days. In no event does the court have the power to
24 absolve a person who violates this subdivision from the obligation
25 of spending at least 90 days in confinement in a county jail.

26 In addition to any punishment prescribed by this section, a court
27 may suspend, for not more than 30 days, the privilege of the person
28 to operate a motor vehicle pursuant to Section 13201.5 of the
29 Vehicle Code for any violation of subdivision (b) that was
30 committed within 1,000 feet of a private residence and with the
31 use of a vehicle. In lieu of the suspension, the court may order a
32 person's privilege to operate a motor vehicle restricted, for not
33 more than six months, to necessary travel to and from the person's
34 place of employment or education. If driving a motor vehicle is
35 necessary to perform the duties of the person's employment, the
36 court may also allow the person to drive in that person's scope of
37 employment.

38 SEC. 3. Section 653.22 of the Penal Code is amended to read:

39 653.22. (a) It is unlawful for any person to loiter in any public
40 place with the intent to commit prostitution. This intent is

1 evidenced by acting in a manner and under circumstances ~~which~~
2 *that* openly demonstrate the purpose of inducing, enticing, or
3 soliciting prostitution, or procuring another to commit prostitution.

4 (b) Among the circumstances that may be considered in
5 determining whether a person loiters with the intent to commit
6 prostitution are that the person:

7 (1) Repeatedly beckons to, stops, engages in conversations with,
8 or attempts to stop or engage in conversations with passersby,
9 indicative of soliciting for prostitution.

10 (2) Repeatedly stops or attempts to stop motor vehicles by
11 hailing the drivers, waving arms, or making any other bodily
12 gestures, or engages or attempts to engage the drivers or passengers
13 of the motor vehicles in conversation, indicative of soliciting for
14 prostitution.

15 (3) Has been convicted of violating this section, subdivision (a)
16 or (b) of Section 647, or any other offense relating to or involving
17 prostitution, within five years of the arrest under this section.

18 (4) Circles an area in a motor vehicle and repeatedly beckons
19 to, contacts, or attempts to contact or stop pedestrians or other
20 motorists, indicative of soliciting for prostitution.

21 (5) Has engaged, within six months prior to the arrest under this
22 section, in any behavior described in this subdivision, with the
23 exception of paragraph (3), or in any other behavior indicative of
24 prostitution activity.

25 (c) The list of circumstances set forth in subdivision (b) is not
26 exclusive. The circumstances set forth in subdivision (b) should
27 be considered particularly salient if they occur in an area that is
28 known for prostitution activity. Any other relevant circumstances
29 may be considered in determining whether a person has the
30 requisite intent. Moreover, no one circumstance or combination
31 of circumstances is in itself determinative of intent. Intent ~~must~~
32 *shall* be determined based on an evaluation of the particular
33 circumstances of each case.

34 (d) *If a person under 18 years of age has violated subdivision*
35 *(a), a peace officer, if he or she is reasonably able to do so, shall*
36 *place the person, or cause him or her to be placed, in civil*
37 *protective custody on a safety hold as a sexually exploited minor.*
38 *The person shall be taken to a secure protective facility, designated*
39 *pursuant to Section 307.6 of the Welfare and Institutions Code. A*
40 *peace officer may place a minor in civil protective custody on a*

1 *safety hold with that kind and degree of force that would be lawful*
2 *were he or she effecting an arrest for a misdemeanor without a*
3 *warrant. A person who has been placed in civil protective custody*
4 *on a safety hold as a sexually exploited minor shall not thereafter*
5 *be subject to any criminal prosecution or juvenile court proceeding*
6 *based on the facts giving rise to this placement.*

7 SEC. 4. Section 653.23 of the Penal Code is amended to read:
8 653.23. (a) It is unlawful for any person to do either of the
9 following:

10 (1) Direct, supervise, recruit, or otherwise aid another person
11 in the commission of a violation of subdivision (b) of Section 647
12 or subdivision (a) of Section 653.22.

13 (2) Collect or receive all or part of the proceeds earned from an
14 act or acts of prostitution committed by another person in violation
15 of subdivision (b) of Section 647.

16 (b) Among the circumstances that may be considered in
17 determining whether a person is in violation of subdivision (a) are
18 that the person does the following:

19 (1) Repeatedly speaks or communicates with another person
20 who is acting in violation of subdivision (a) of Section 653.22.

21 (2) Repeatedly or continuously monitors or watches another
22 person who is acting in violation of subdivision (a) of Section
23 653.22.

24 (3) Repeatedly engages or attempts to engage in conversation
25 with pedestrians or motorists to solicit, arrange, or facilitate an act
26 of prostitution between the pedestrians or motorists and another
27 person who is acting in violation of subdivision (a) of Section
28 653.22.

29 (4) Repeatedly stops or attempts to stop pedestrians or motorists
30 to solicit, arrange, or facilitate an act of prostitution between
31 pedestrians or motorists and another person who is acting in
32 violation of subdivision (a) of Section 653.22.

33 (5) Circles an area in a motor vehicle and repeatedly beckons
34 to, contacts, or attempts to contact or stop pedestrians or other
35 motorists to solicit, arrange, or facilitate an act of prostitution
36 between the pedestrians or motorists and another person who is
37 acting in violation of subdivision (a) of Section 653.22.

38 (6) Receives or appears to receive money from another person
39 who is acting in violation of subdivision (a) of Section 653.22.

1 (7) Engages in any of the behavior described in paragraphs (1)
2 to (6), inclusive, in regard to or on behalf of two or more persons
3 who are in violation of subdivision (a) of Section 653.22.

4 (8) Has been convicted of violating this section, subdivision (a)
5 or (b) of Section 647, subdivision (a) of Section 653.22, Section
6 266h, or 266i, or any other offense relating to or involving
7 prostitution within five years of the arrest under this section.

8 (9) Has engaged, within six months prior to the arrest under
9 subdivision (a), in any behavior described in this subdivision, with
10 the exception of paragraph (8), or in any other behavior indicative
11 of prostitution activity.

12 (c) The list of circumstances set forth in subdivision (b) is not
13 exclusive. The circumstances set forth in subdivision (b) should
14 be considered particularly salient if they occur in an area that is
15 known for prostitution activity. Any other relevant circumstances
16 may be considered. Moreover, no one circumstance or combination
17 of circumstances is in itself determinative. A violation of
18 subdivision (a) shall be determined based on an evaluation of the
19 particular circumstances of each case.

20 (d) Nothing in this section shall preclude the prosecution of a
21 suspect for a violation of Section 266h or 266i or for any other
22 offense, or for a violation of this section in conjunction with a
23 violation of Section 266h or 266i or any other offense.

24 *(e) If a person under 18 years of age has violated subdivision*
25 *(a), a peace officer, if he or she is reasonably able to do so, shall*
26 *place the person, or cause him or her to be placed, in civil*
27 *protective custody on a safety hold as a sexually exploited minor.*
28 *The person shall be taken to a secure protective facility, designated*
29 *pursuant to Section 307.6 of the Welfare and Institutions Code. A*
30 *peace officer may place a minor in civil protective custody on a*
31 *safety hold with that kind and degree of force that would be lawful*
32 *were he or she effecting an arrest for a misdemeanor without a*
33 *warrant. A person who has been placed in civil protective custody*
34 *on a safety hold as a sexually exploited minor shall not thereafter*
35 *be subject to any criminal prosecution or juvenile court proceeding*
36 *based on the facts giving rise to this placement.*

37 SEC. 5. Section 679.01 of the Penal Code is amended to read:

38 679.01. As used in this title, the following definitions shall
39 control:

1 (a) “Crime” means an act committed in this state which, if
2 committed by a competent adult, would constitute a misdemeanor
3 or felony.

4 (b) “*Sexually exploited minor*” means a person under 18 years
5 of age who has been placed in civil protective custody on a safety
6 hold based on a violation of subdivision (a) or (b) of Section 647,
7 subdivision (a) of Section 653.22, or subdivision (a) of Section
8 653.23.

9 ~~(b)~~

10 (c) “Victim” means a person against whom a crime has been
11 committed. “*Victim*” includes a sexually exploited minor.

12 ~~(e)~~

13 (d) “Witness” means any person who has been or is expected
14 to testify for the prosecution, or who, by reason of having relevant
15 information, is subject to call or likely to be called as a witness
16 for the prosecution, whether or not any action or proceeding has
17 yet been commenced.

18 SEC. 6. Section 679.04 of the Penal Code is amended to read:

19 679.04. (a) A victim of sexual assault as the result of any
20 offense specified in paragraph (1) of subdivision (b) of Section
21 264.2, or a sexually exploited minor, has the right to have victim
22 advocates and a support person of the victim’s choosing present
23 at any interview by law enforcement authorities, district attorneys,
24 or defense attorneys. However, the support person may be excluded
25 from an interview by law enforcement or the district attorney if
26 the law enforcement authority or the district attorney determines
27 that the presence of that individual would be detrimental to the
28 purpose of the interview. As used in this section, “victim advocate”
29 means a sexual assault counselor, as defined in Section 1035.2 of
30 the Evidence Code, or a victim advocate working in a center
31 established under Article 2 (commencing with Section 13835) of
32 Chapter 4 of Title 6 of Part 4.

33 (b) (1) Prior to the commencement of the initial interview by
34 law enforcement authorities or the district attorney pertaining to
35 any criminal action arising out of a sexual assault, a victim of
36 sexual assault as the result of any offense specified in Section
37 264.2 shall be notified orally or in writing by the attending law
38 enforcement authority or district attorney that the victim has the
39 right to have victim advocates and a support person of the victim’s
40 choosing present at the interview or contact. This subdivision

1 applies to investigators and agents employed or retained by law
2 enforcement or the district attorney.

3 (2) At the time the victim is advised of his or her rights pursuant
4 to paragraph (1), the attending law enforcement authority or district
5 attorney shall also advise the victim of the right to have victim
6 advocates and a support person present at any interview by the
7 defense attorney or investigators or agents employed by the defense
8 attorney.

9 (c) An initial investigation by law enforcement to determine
10 whether a crime has been committed and the identity of the
11 suspects shall not constitute a law enforcement interview for
12 purposes of this section.

13 SEC. 7. Section 11165.1 of the Penal Code is amended to read:

14 11165.1. As used in this article, “sexual abuse” means sexual
15 assault or sexual exploitation as defined by the following:

16 (a) “Sexual assault” means conduct in violation of one or more
17 of the following sections: Section 261 (rape), subdivision (d) of
18 Section 261.5 (statutory rape), 264.1 (rape in concert), 285 (incest),
19 286 (sodomy), subdivision (a) or (b), or paragraph (1) of
20 subdivision (c) of Section 288 (lewd or lascivious acts upon a
21 child), 288a (oral copulation), 289 (sexual penetration), or 647.6
22 (child molestation).

23 (b) Conduct described as “sexual assault” includes, but is not
24 limited to, all of the following:

25 (1) Any penetration, however slight, of the vagina or anal
26 opening of one person by the penis of another person, whether or
27 not there is the emission of semen.

28 (2) Any sexual contact between the genitals or anal opening of
29 one person and the mouth or tongue of another person.

30 (3) Any intrusion by one person into the genitals or anal opening
31 of another person, including the use of any object for this purpose,
32 except that, it does not include acts performed for a valid medical
33 purpose.

34 (4) The intentional touching of the genitals or intimate parts
35 (including the breasts, genital area, groin, inner thighs, and
36 buttocks) or the clothing covering them, of a child, or of the
37 perpetrator by a child, for purposes of sexual arousal or
38 gratification, except that, it does not include acts which may
39 reasonably be construed to be normal caretaker responsibilities;

1 interactions with, or demonstrations of affection for, the child; or
2 acts performed for a valid medical purpose.

3 (5) The intentional masturbation of the perpetrator's genitals in
4 the presence of a child.

5 (c) "Sexual exploitation" refers to any of the following:

6 (1) Conduct involving matter depicting a minor engaged in
7 obscene acts in violation of Section 311.2 (preparing, selling, or
8 distributing obscene matter) or subdivision (a) of Section 311.4
9 (employment of minor to perform obscene acts).

10 (2) Any person who knowingly promotes, aids, or assists,
11 employs, uses, persuades, induces, or coerces a child, or any person
12 responsible for a child's welfare, who knowingly permits or
13 encourages a child to engage in, or assist others to engage in,
14 prostitution or a live performance involving obscene sexual
15 conduct, or to either pose or model alone or with others for
16 purposes of preparing a film, photograph, negative, slide, drawing,
17 painting, or other pictorial depiction, involving obscene sexual
18 conduct. For the purpose of this section, "person responsible for
19 a child's welfare" means a parent, guardian, foster parent, or a
20 licensed administrator or employee of a public or private residential
21 home, residential school, or other residential institution.

22 (3) Any person who depicts a child in, or who knowingly
23 develops, duplicates, prints, or exchanges, any film, photograph,
24 video tape, negative, or slide in which a child is engaged in an act
25 of obscene sexual conduct, except for those activities by law
26 enforcement and prosecution agencies and other persons described
27 in subdivisions (c) and (e) of Section 311.3.

28 (4) *Conduct involving a violation of subdivision (a) or (b) of*
29 *Section 647, subdivision (a) of Section 653.22, or subdivision (a)*
30 *of Section 653.23 by a minor.*

31 SEC. 8. Section 11166.3 of the Penal Code is amended to read:

32 11166.3. (a) ~~The Legislature intends that in~~ *In* each county,
33 the law enforcement agencies and the county welfare or probation
34 department shall develop and implement *a joint policy with*
35 *cooperative arrangements in order to coordinate existing duties in*
36 *connection with the investigation of suspected child abuse or*
37 *neglect cases, including the appropriate handling of sexually*
38 *exploited minors, as described in paragraph (4) of subdivision (c)*
39 *of Section 11165.1.* The local law enforcement agency having
40 jurisdiction over a case reported under Section 11166 shall report

1 to the county welfare or probation department that it is investigating
2 the case within 36 hours after starting its investigation. The county
3 welfare department or probation department shall, in cases where
4 a minor is a victim of actions specified in Section 288 of this code
5 and a petition has been filed pursuant to Section 300 of the Welfare
6 and Institutions Code with regard to the minor, evaluate what
7 action or actions would be in the best interest of the child victim.
8 Notwithstanding any other provision of law, the county welfare
9 department or probation department shall submit in writing its
10 findings and the reasons therefor to the district attorney on or
11 before the completion of the investigation. The written findings
12 and the reasons therefor shall be delivered or made accessible to
13 the defendant or his or her counsel in the manner specified in
14 Section 859.

15 (b) The local law enforcement agency having jurisdiction over
16 a case reported under Section 11166 shall report to the district
17 office of the State Department of Social Services any case reported
18 under this section if the case involves a facility specified in
19 paragraph (5) or (6) of subdivision (a) of Section 1502, Section
20 1596.750 or 1596.76 of the Health and Safety Code, and the
21 licensing of the facility has not been delegated to a county agency.
22 The law enforcement agency shall send a copy of its investigation
23 report and any other pertinent materials to the licensing agency
24 upon the request of the licensing agency.

25 SEC. 9. Section 300 of the Welfare and Institutions Code is
26 amended to read:

27 300. ~~Any~~A child who comes within any of the following
28 descriptions is within the jurisdiction of the juvenile court, which
29 may adjudge that person to be a dependent child of the court:

30 (a) The child has suffered, or there is a substantial risk that the
31 child will suffer, serious physical harm inflicted nonaccidentally
32 upon the child by the child's parent or guardian. For the purposes
33 of this subdivision, a court may find there is a substantial risk of
34 serious future injury based on the manner in which a less serious
35 injury was inflicted, a history of repeated inflictions of injuries on
36 the child or the child's siblings, or a combination of these and other
37 actions by the parent or guardian ~~which~~ that indicate the child is
38 at risk of serious physical harm. For purposes of this subdivision,
39 "serious physical harm" does not include reasonable and

1 age-appropriate spanking to the buttocks—~~where~~ *if* there is no
2 evidence of serious physical injury.

3 (b) The child has suffered, or there is a substantial risk that the
4 child will suffer, serious physical harm or illness, as a result of the
5 failure or inability of his or her parent or guardian to adequately
6 supervise or protect the child, or the willful or negligent failure of
7 the child's parent or guardian to adequately supervise or protect
8 the child from the conduct of the custodian with whom the child
9 has been left, or by the willful or negligent failure of the parent or
10 guardian to provide the child with adequate food, clothing, shelter,
11 or medical treatment, or by the inability of the parent or guardian
12 to provide regular care for the child due to the parent's or
13 guardian's mental illness, developmental disability, or substance
14 abuse. ~~No~~ A child shall *not* be found to be a person described by
15 this subdivision solely due to the lack of an emergency shelter for
16 the family. ~~Whenever~~ *If* it is alleged that a child comes within the
17 jurisdiction of the court on the basis of the parent's or guardian's
18 willful failure to provide adequate medical treatment or specific
19 decision to provide spiritual treatment through prayer, the court
20 shall give deference to the parent's or guardian's medical treatment,
21 nontreatment, or spiritual treatment through prayer alone in
22 accordance with the tenets and practices of a recognized church
23 or religious denomination, by an accredited practitioner thereof,
24 and shall not assume jurisdiction unless necessary to protect the
25 child from suffering serious physical harm or illness. In making
26 its determination, the court shall consider (1) the nature of the
27 treatment proposed by the parent or guardian, (2) the risks to the
28 child posed by the course of treatment or nontreatment proposed
29 by the parent or guardian, (3) the risk, if any, of the course of
30 treatment being proposed by the petitioning agency, and (4) the
31 likely success of the courses of treatment or nontreatment proposed
32 by the parent or guardian and agency. The child shall continue to
33 be a dependent child pursuant to this subdivision only so long as
34 is necessary to protect the child from risk of suffering serious
35 physical harm or illness.

36 (c) The child is suffering serious emotional damage, or is at
37 substantial risk of suffering serious emotional damage, evidenced
38 by severe anxiety, depression, withdrawal, or untoward aggressive
39 behavior toward self or others, as a result of the conduct of the
40 parent or guardian or who has no parent or guardian capable of

1 providing appropriate care. ~~No~~ A child shall *not* be found to be a
2 person described by this subdivision if the willful failure of the
3 parent or guardian to provide adequate mental health treatment is
4 based on a sincerely held religious belief and if a less intrusive
5 judicial intervention is available.

6 (d) The child has been sexually abused, or there is a substantial
7 risk that the child will be sexually abused, as defined in Section
8 11165.1 of the Penal Code, *specifically including sexual*
9 *exploitation of a minor, as described in paragraph (4) of*
10 *subdivision (c) of Section 11165.1*, by his or her parent or guardian
11 or a member of his or her household, or the parent or guardian has
12 failed to adequately protect the child from sexual abuse when the
13 parent or guardian knew or reasonably should have known that
14 the child was in danger of sexual abuse.

15 (e) The child is under ~~the age of~~ five years *of age* and has
16 suffered severe physical abuse by a parent, or by any person known
17 by the parent, if the parent knew or reasonably should have known
18 that the person was physically abusing the child. For the purposes
19 of this subdivision, “severe physical abuse” means any of the
20 following: any single act of abuse which causes physical trauma
21 of sufficient severity that, if left untreated, would cause permanent
22 physical disfigurement, permanent physical disability, or death;
23 any single act of sexual abuse ~~which~~ *that* causes significant
24 bleeding, deep bruising, or significant external or internal swelling;
25 or more than one act of physical abuse, each of which causes
26 bleeding, deep bruising, significant external or internal swelling,
27 bone fracture, or unconsciousness; or the willful, prolonged failure
28 to provide adequate food. A child ~~may~~ *shall* not be removed from
29 the physical custody of his or her parent or guardian on the basis
30 of a finding of severe physical abuse unless the social worker has
31 made an allegation of severe physical abuse pursuant to Section
32 332.

33 (f) The child’s parent or guardian caused the death of another
34 child through abuse or neglect.

35 (g) The child has been left without any provision for support;
36 physical custody of the child has been voluntarily surrendered
37 pursuant to Section 1255.7 of the Health and Safety Code and the
38 child has not been reclaimed within the 14-day period specified
39 in subdivision (e) of that section; the child’s parent has been
40 incarcerated or institutionalized and cannot arrange for the care of

1 the child; or a relative or other adult custodian with whom the child
2 resides or has been left is unwilling or unable to provide care or
3 support for the child, the whereabouts of the parent are unknown,
4 and reasonable efforts to locate the parent have been unsuccessful.

5 *This subdivision includes sexual exploitation of a minor, as*
6 *described in paragraph (4) of subdivision (c) of Section 11165.1,*
7 *that is not otherwise subject to subdivision (d).*

8 (h) The child has been freed for adoption by one or both parents
9 for 12 months by either relinquishment or termination of parental
10 rights or an adoption petition has not been granted.

11 (i) The child has been subjected to an act or acts of cruelty by
12 the parent or guardian or a member of his or her household, or the
13 parent or guardian has failed to adequately protect the child from
14 an act or acts of cruelty ~~when~~ *if* the parent or guardian knew or
15 reasonably should have known that the child was in danger of
16 being subjected to an act or acts of cruelty.

17 (j) The child's sibling has been abused or neglected, as defined
18 in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk
19 that the child will be abused or neglected, as defined in those
20 subdivisions. The court shall consider the circumstances
21 surrounding the abuse or neglect of the sibling, the age and gender
22 of each child, the nature of the abuse or neglect of the sibling, the
23 mental condition of the parent or guardian, and any other factors
24 the court considers probative in determining whether there is a
25 substantial risk to the child.

26 It is the intent of the Legislature that nothing in this section
27 disrupt the family unnecessarily or intrude inappropriately into
28 family life, prohibit the use of reasonable methods of parental
29 discipline, or prescribe a particular method of parenting. Further,
30 nothing in this section is intended to limit the offering of voluntary
31 services to those families in need of assistance but who do not
32 come within the descriptions of this section. To the extent that
33 savings accrue to the state from child welfare services funding
34 obtained as a result of the enactment of the act that enacted this
35 section, those savings shall be used to promote services ~~which~~ *that*
36 support family maintenance and family reunification plans, such
37 as client transportation, out-of-home respite care, parenting
38 training, and the provision of temporary or emergency in-home
39 caretakers and persons teaching and demonstrating homemaking
40 skills. The Legislature further declares that a physical disability,

1 such as blindness or deafness, is no bar to the raising of happy and
2 well-adjusted children and that a court's determination pursuant
3 to this section shall center upon whether a parent's disability
4 prevents him or her from exercising care and control. The
5 Legislature further declares that a child whose parent has been
6 adjudged a dependent child of the court pursuant to this section
7 shall not be considered to be at risk of abuse or neglect solely
8 because of the age, dependent status, or foster care status of the
9 parent.

10 As used in this section, "guardian" means the legal guardian of
11 the child.

12 SEC. 10. Section 307.6 is added to the Welfare and Institutions
13 Code, to read:

14 307.6. (a) Notwithstanding Section 307, an officer who takes
15 a minor suspected of being a person described in Section 300 into
16 temporary custody pursuant to subdivision (a) of Section 305 shall,
17 in a case in which the minor has been placed in civil protective
18 custody on a safety hold as a sexually exploited minor based on a
19 violation of subdivision (a) or (b) of Section 647, subdivision (a)
20 of Section 653.22, or subdivision (a) of Section 653.23, take the
21 minor to a secure protective facility designated by the county that
22 offers victim services to establish a safety plan and secure
23 appropriate placement for the minor. Organizations or programs
24 receiving referrals pursuant to this section shall have a contract or
25 an agreement with the county to provide shelter care or counseling.
26 Employees of a program receiving referrals pursuant to this section
27 are "child care custodians" for the purpose of the requirements of
28 Section 11165.7 of the Penal Code. The receiving organization
29 shall take immediate steps to notify the minor's parent, guardian,
30 or a responsible relative of the place to which the minor was taken.

31 (b) The officer shall make a report of suspected child abuse or
32 neglect as required pursuant to Section 11166 of the Penal Code.

33 SEC. 11. Section 313 of the Welfare and Institutions Code is
34 amended to read:

35 313. (a) ~~Whenever~~*(1) If* a minor is taken into custody by a
36 peace officer or probation officer, except when ~~such~~ *the* minor
37 willfully misrepresents himself as 18 or more years of age, ~~such~~
38 *the* minor shall be released within 48 hours after having been taken
39 into custody, excluding nonjudicial days, unless within ~~said~~ *that*

1 period of time a petition to declare him *or her* a dependent child
2 has been filed pursuant to the provisions of this chapter.

3 ~~(b) Whenever~~

4 (2) ~~If a minor who has been~~ is held in custody for more than six
5 hours by the probation officer ~~is and subsequently released and~~
6 ~~no without the filing of a petition is filed,~~ the probation officer
7 shall prepare a written explanation ~~of why the minor was held for~~
8 ~~holding the minor~~ in custody for more than six hours. The written
9 explanation shall be prepared within 72 hours after the minor is
10 released from custody and filed in the record of the case. A copy
11 of the written explanation shall be sent to the parents, guardian,
12 or other person having care or custody of the minor.

13 *(b) If a minor is taken into custody by a peace officer or*
14 *probation officer, and taken to a secure protective facility pursuant*
15 *to Section 307.6, the minor may be held in custody in excess of 48*
16 *hours in order to establish a safety plan and secure appropriate*
17 *placement for the minor.*

18 SEC. 12. Section 626.1 is added to the Welfare and Institutions
19 Code, to read:

20 626.1. (a) Notwithstanding Section 626, an officer who takes
21 a minor into temporary custody under Section 625 shall, in any
22 case in which a minor has been placed in civil protective custody
23 on a safety hold as a sexually exploited minor based on a violation
24 of subdivision (a) or (b) of Section 647, subdivision (a) of Section
25 653.22, or subdivision (a) of Section 653.23, take the minor to a
26 secure protective facility designated by the county that offers victim
27 services to establish a safety plan and secure appropriate placement
28 for the minor. Organizations or programs receiving referrals
29 pursuant to this section shall have a contract or an agreement with
30 the county to provide shelter care or counseling. Employees of a
31 program receiving referrals pursuant to this section are “child care
32 custodians” for the purpose of the requirements of Section 11165.7
33 of the Penal Code. The receiving organization shall take immediate
34 steps to notify the minor’s parent, guardian, or a responsible
35 relative of the place to which the minor was taken.

36 (b) The officer shall make a report of suspected child abuse or
37 neglect as required pursuant to Section 11166 of the Penal Code.

38 SEC. 13. If the Commission on State Mandates determines
39 that this act contains costs mandated by the state, reimbursement
40 to local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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